

**OPINION
58-221**

May 12, 1958 (OPINION)

TRANSIENT MERCHANTS

RE: Applicability of Law to Resident Corporation

This is in reply to your telephone call of May 10, 1958. An opinion was requested concerning the applicability of Chapter 51-04 of the 1957 Supplement to the N.D.R.C. of 1943 which is entitled TRANSIENT MERCHANTS. The question is: Does Chapter 51j05 of the 1957 Supplement to the N.D.R.C. of 1943 apply to a North Dakota resident corporation that travels through the various counties of the state and sells its wares?

Subsection 1 of Section 51-0401 of the 1957 Supplement to the N.D.R.C. of 1943 states:

"1. 'Transient merchant' includes any person, individual, copartnership, or corporation, either as principal or agent, who engages in, does, or transacts any temporary or transient business in this state, either in one locality, or in traveling from place to place in this state, selling goods, wares, and merchandise, who does not intend to become and does not become a permanent merchant of such place, and who, for the purpose of carrying on such business, hires, leases, occupies, or uses a building, structure, lot, tract, railroad car, or motor vehicle for the exhibition and sale of such goods, wares, and merchandise."

The language of the above statute which defines "transient merchant" is clear and unequivocal and must be interpreted by the accepted rules of interpretation. Section 1-0202 of the N.D.R.C. of 1943 states:

"Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained."

The word "corporation" is included under the definition of "transient merchant" and therefore any corporation that engages in type of selling defined comes within the purview of Chapter 51-04 of the 1957 Supplement to the N.D.R.C. of 1943. It must be assumed that if the Legislature wished to exclude a domestic or resident corporation from the act that it would be so expressed therein.

From the above, it is the opinion of this office that corporations, whether domestic or foreign, resident or non-resident, licensed or unlicensed, are subject to Chapter 51-04 of the 1957 Supplement to the N.D.R.C. of 1943 when operating as transient merchants as defined by Section 51-0401 of the Act.

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